

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1196293
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: George W. FOOTE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1905

George W. FOOTE

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 10 June 1971, an Administrative Law Judge of the United States Coast Guard at Portland, Oregon, revoked Appellant's seaman's documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that on or about 16 September 1970, Appellant was convicted in the Superior Court of the State of Oregon of violation of a narcotic drug law of that State.

The Investigating Officer produced, and the Administrative Law Judge entered into the record a certified record of the Oregon court.

In defense, Appellant offered no evidence.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved by plea. The Administrative Law Judge then entered an order revoking all documents issued to Appellant.

The entire decision was served on 15 June 1971. Appeal was timely filed.

FINDINGS OF FACT

On 16 September 1970, Appellant was convicted in a Circuit Court of Oregon for a violation of a narcotic drug law of that State.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the order is severe.

APPEARANCE: Appellant, pro se.

OPINION

I

Appellant complains that the Administrative Law Judge's order is excessive. Before explaining why the order cannot be excessive, it is well to note some matters in the record which may have misled Appellant as to his position.

The record is replete with references to R.S. 4450 (46 U.S.C. 239). This statute is not the source of authority for the proceedings in this case. There are also some references to 46 U.S.C. 239b, referred to by the Administrative Law Judge as 46 U.S.C. 239(b). It is apparent that the case was treated as a "conviction" case under 46 U.S.C. 239b from the specific allegation of the pleading, from Appellant's plea of "guilty" to the allegation of conviction of a narcotic drug law violation and from other circumstances of the case. There is therefore, no fatal error.

In the Administrative Law Judge's written decision there is another error. It says:

"The Examiner is of the opinion that this is a charge for which revocation of the respondent's document is mandatory under authority of Title 46, CFR 137.03-4."

He then went on to a 1970 amendment to that section which permitted discretion to administrative law judges in framing orders in cases involving a one time use of or experiment with marijuana not likely to be repeated. The section applies only to proceedings under R.S. 4450 in which the misconduct charged is the substantive offense of narcotic dealings. It has absolutely no bearing on proceedings under 46 U.S.C. 439b.

The Administrative Law Judge concluded that since marijuana was not the narcotic for possession of which Appellant was convicted he was deprived of the limited discretion granted by the cited regulation and, hence, he entered an order of revocation. The Administrative Law Judge's order was correct, even if for the wrong reason.

46 U.S.C. 239b provides only for revocation when what is proved in a proceeding under that section is conviction of violation of a narcotic drug law or use of or addiction to a narcotic. The regulation applicable is 46 CFR 137.03-10, which is not a policy statement but is merely explicative of the statute.

The order entered against Appellant's document is not excessive, it is the only order possible under the circumstances and has made so by Act of Congress.

II

Appellant also asserts that he is "paying doubly for [his] misconduct."

If this is construed narrowly as a reference to "double jeopardy" it is obviously misdirected. The proceeding under 46 U.S.C. 239b is remedial and involves no possibility of fine or imprisonment, while the "double jeopardy" concept appears only in criminal proceedings.

Viewed more broadly, the argument may be that it is not fair that two unpleasant consequences may be imposed upon Appellant for one act. It is not for me to question the "fairness" of the result. The statute in question, as applicable to this case, presupposes a conviction before the remedial revocation proceedings take place. This is the will of Congress.

ORDER

The order of the Administrative Law Judge dated at Seattle, Washington, D. C., on 10 June 1971, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 30th day of January 1973.

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